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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1137**

James Jesse Hunter,
Appellant,

vs.

Kim Coughlin, et al.,
Respondents.

**Filed May 17, 2021
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Crow Wing County District Court
File No. 18-CV-19-3705

Edward R. Shaw, Brainerd, Minnesota (for appellant)

Joseph E. Flynn, Patrick S. Collins, Jardine, Logan & O'Brien, PLLP, Lake Elmo,
Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Cleary, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the district court's grant of respondents' motion to dismiss
appellant's defamation suit under Minn. R. Civ. P. 12.02(e) for failure to state a claim.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

Because we conclude that the pleading of two of the alleged defamatory statements are sufficient to survive the motion to dismiss, we reverse the district court's order in part and remand, but affirm the dismissal of the other claims in the complaint.

FACTS

Appellant James Hunter sued the City of Crosby (the city), Police Chief Kim Coughlin, and Lieutenant Kevin Randolph (collectively respondents) for defamation. Hunter alleges that, between 2016 and 2019, Coughlin and Randolph set out to damage Hunter's personal and business reputation in an effort to derail his campaign to be mayor of the city, to stop him from taking office after he was elected, and then to force him to resign as mayor.

Hunter began his campaign for mayor of the city in the summer of 2016, and was elected in November of that year. He alleges in his first amended complaint (the complaint)¹ that the individual respondents "arranged" to have him arrested in March 2017 and "made numerous false statements to the media" and people in the community accusing Hunter of committing criminal acts and of being a "corrupt politician and businessman." The complaint also asserts as evidence of respondents' intentional campaign against him that, while Hunter may have been charged with numerous crimes, he was either acquitted of those charges or the charges were dismissed, including acquittals of the charges of theft

¹ Hunter filed a first amended complaint after respondents filed an initial motion to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief could be granted in lieu of answering the complaint. This appeal concerns the district court's grant of respondents' second motion to dismiss under Minn. R. Civ. P. 12.02(e) filed in response to the first amended complaint.

by swindle, second-degree assault, and “charitable gambling fraud”; dismissal by the court of a charge of possession of stolen property; and dismissal by the county attorney of other pending criminal charges.

The complaint contains no individual counts. Instead, it sets forth paragraphs alleging a variety of defamatory statements with sparse detail, citing different time periods and methods of publication. Hunter claims in the complaint that, as a result of the alleged defamation, he has suffered poor health and has been hospitalized for stress-related illnesses; suffered serious financial, reputational, and other harm; was unseated from his position of mayor; lost much of his business; and suffered other harms, including criminal prosecution.

Respondents moved to dismiss the complaint for failure to state a claim. The district court granted the motion and ruled on the allegations in the complaint on a paragraph-by-paragraph basis. The district court concluded that the various claims could be dismissed for one or more of the following reasons: lack of specificity as to speaker, statement, time, or place; allegations of statements that contained opinion and were not statements of fact; failure to allege necessary elements of a claim for defamation per se; absolute privilege; failure to claim actual malice; failure to adequately allege damages; and the expiration of the statute of limitations. Hunter now appeals.

DECISION

Hunter challenges the district court’s grant of respondents’ motion to dismiss his defamation claim under Minn. R. Civ. P. 12.02(e), arguing that he satisfied the pleading requirements and should be allowed the opportunity to engage in discovery to supplement

any claims found lacking in specificity. We review a district court’s grant of a motion to dismiss de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). “In so doing, we consider only the facts alleged in the complaint, accepting those facts as true.” *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted).

In our analysis, we first provide a brief overview of the law of defamation and address Hunter’s overarching argument that the complaint should be analyzed as a whole without regard to the specific allegations of defamation. We then turn to a review of the district court’s ruling with regard to specific claims in the complaint.

I. Defamation claims must be pleaded with sufficient specificity.

Minnesota’s general rules of pleading require only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Minn. R. Civ. P. 8.01. The primary purpose of a complaint is to “put the defendant on notice of the claims against him.” *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006); *see Rogers v. Drewry*, 264 N.W. 225, 226 (Minn. 1935) (“The primary object of pleadings is to apprise each party of the grounds of claim or defense asserted by the other, in order that he may come to trial with the necessary proof and be saved the expense and trouble of preparing to prove or disprove facts about which there is no real controversy between the parties.” (quotation omitted)).

Defamation suits require greater specificity in pleading and have generally required the defamatory matter to be set out verbatim.² *Moreno v. Crookston Times Printing Co.*,

² In reviewing Minnesota pleadings, federal courts have required that “a claim for defamation must be pled with a certain degree of specificity” and that pleadings must “[a]t the very least” allege which defendants made the statements, to whom, and where. *Schibursky v. Int’l Bus. Machs. Corp.*, 820 F. Supp. 1169, 1181 (D. Minn. 1993); *see also*

610 N.W.2d 321, 326-27 (Minn. 2000) (citing *Am. Book Co. v. Kingdom Pub. Co.*, 73 N.W. 1089, 1090 (Minn. 1898)). A failure to plead the exact defamatory statement is not necessarily fatal to a claim, but the allegedly defamatory statements must be pleaded with enough specificity to provide notice to the defendant of the defamatory statement he or she allegedly made. *See, e.g., Schibursky*, 820 F. Supp. at 1181.

To establish a defamation claim, a plaintiff must prove

- (1) the [allegedly] defamatory statement was communicated to someone other than the plaintiff;
- (2) the statement is false;
- (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and
- (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

McKee v. Laurion, 825 N.W.2d 725, 729-30 (Minn. 2013) (quotations and citation omitted). To be actionable, the statement must be one of fact, not opinion; the First Amendment generally protects statements of opinion from defamation liability. *Id.* at 733; *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 93-94 (Minn. App. 1991).

Finally, if a statement is defamatory per se, damages are presumed and the plaintiff is not required to prove actual damages. *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 875 (Minn. 2019). Statements that are defamatory per se include “charges of a crime, imputations of a loathsome disease, [or] imputations affecting a person’s conduct of business, trade, or profession.” *Anderson v. Kammeier*, 262 N.W.2d 366, 372 (Minn.

Stock v. Heiner, 696 F. Supp. 1253, 1260 (D. Minn. 1988); *Pinto v. Internationale Set, Inc.*, 650 F. Supp. 306, 309 (D. Minn. 1986). Although the federal courts were applying federal pleading requirements in those cases, the cases provide persuasive guidance.

1977); *see also* *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

II. The district court properly analyzed the complaint by assessing each alleged defamatory statement.

As a threshold issue, Hunter argues that the district court erred by analyzing each individual allegation in his complaint. He contends that his complaint consists “of one cause of action, defamation” and, when read as a whole, the complaint states “plausible claims of [d]efamation against [r]espondents.” He argues that his complaint should be allowed to proceed because he needs to undertake discovery before he can add greater specificity to his claims. Hunter, however, offers no caselaw to support his argument and we are not persuaded. A defamation claim cannot be created by simply stringing together a series of broad assertions, none of which are by themselves sufficient to state a claim. We therefore conclude that the district court properly analyzed individual allegations in the complaint to determine whether pleading requirements were satisfied.

III. We affirm the district court’s dismissal of the allegations in the complaint for failure to state a claim, except as to two allegations.

We turn now to a review of the individual allegations in the complaint and organize our analysis according to the grounds relied upon by the district court as its basis for dismissing the claims.

A. Dismissal for Lack of Specificity

The majority of the allegations in the complaint were dismissed by the district court because they lacked adequate specificity.³ The allegations include claims that either Coughlin or Randolph (or both): made “numerous false statements” or “lurid and false statements” about Hunter; filed a “meritless ethics complaint” against Hunter’s criminal defense attorney that contained defamatory statements about Hunter⁴; told “at least one citizen witness in a criminal proceeding concerning Hunter” not to speak with anyone from the defense; made “repeated statements” to community members that they wished Hunter “would die” and encouraged people to attend rallies and make signs against Hunter; “showed [two people] fabricated evidence in a criminal proceeding” against Hunter in the years 2017 and 2018; made false statements to a third person “during the years 2017 through 2019,” falsely claiming that Hunter had committed criminal acts; “told individuals who worked for the Crosby Police Department that they were not allowed to have contact with” Hunter; made statements to a number of individuals that they did not have to pay Hunter what they owed on vehicles purchased at his car dealership; and made “false

³ Paragraphs 5-25, 31-32, 34-38, and 42-44 of the complaint were dismissed by the district court for lack of specificity. We note that a number of these paragraphs contain only background factual allegations. We therefore analyze only the paragraphs that appear to assert an allegedly defamatory statement.

⁴ The ethics complaint was attached as an exhibit to Hunter’s complaint and states that Hunter’s criminal defense attorney sent press releases to local and regional media “attacking Chief Kim Coughlin and myself [Randolph]” and that the defense lawyer’s “personal attacks against us are not truthful, and have very little bearing on the case he is defending.” The document contains no statements by either Coughlin or Randolph about Hunter.

statements” to Hunter’s then-wife “to make it appear” that Hunter was guilty of serious crimes, which caused his wife to divorce him.

None of the allegations dismissed by the district court for lack of specificity, with the exception of two paragraphs that we discuss below, contain even an approximation of any actual statements. Instead, the complaint allegations simply repeat in conclusory terms that false and defamatory statements were made and that they were part and parcel of a campaign by Coughlin and Randolph to damage Hunter’s reputation and force him out of the mayoral race and out of office.

With respect to false statements in media accounts, the complaint attached a number of media stories concerning the criminal charges brought against Hunter with headlines like “Crosby mayor arrested for assault, swindle, gambling fraud” or “Crosby, Minnesota mayor charged with swindling girlfriend’s husband.” The complaint does not identify any specific statements in the articles that he claims are actionable.⁵ Hunter claims that he has satisfied the pleading requirements by attaching copies of news articles to his complaint and cites the *Moreno* case as providing support for his argument. *Moreno*, however, is easily distinguishable. In *Moreno*, while the plaintiff attached a copy of a newspaper article to the complaint, the complaint itself identified the exact statements that were the basis of

⁵ Only one of the articles attached to the complaint contains a statement attributed to either Coughlin or Randolph and that statement is not referenced in the complaint. *Cf. Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 520, 538 (Minn. App. 1997) (allegedly defamatory statements not contained in the complaint are outside the scope of plaintiff’s claim), *review denied* (Minn. June 11, 1997). The articles do contain statements by Hunter’s criminal defense attorney about respondents, and one article described Hunter’s defense attorney as suggesting Hunter was “unfairly targeted by a police investigator [Randolph] with a vendetta against his client, and a jealous ex-husband looking for revenge.”

the claim; when, where, and by whom the statements were originally made; and the date the article was published. 610 N.W.2d at 326-27. None of that is present in Hunter's complaint.

The other allegations dismissed for lack of specificity contain broad time frames and lack other necessary detail. Indeed, Hunter seems to acknowledge the lack of specificity, asserting in his complaint that additional details are "expected to come out in the discovery process as [d]efendants will not voluntarily disclose" the information, and that "[t]he [d]efendants and their colleagues or affiliates are hostile witnesses . . . and will not produce and disclose much of the existing evidence or testimony . . . without being compelled by law."

As noted above, the law of defamation requires that the alleged defamatory statement be set out with adequate specificity to place the defendant on notice of the alleged defamatory statement. *Am. Book Co.*, 73 N.W. at 1090; *Stead-Bowers v. Langley*, 636 N.W.2d 334, 342 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). Because the allegations lack sufficient specificity, we discern no error in the district court's dismissal of these allegations, with the exception of two allegations discussed below.⁶

⁶ We note that the allegations contained in paragraphs 11 and 15 of the complaint were also dismissed by the district court on the grounds that Hunter is a public figure and the allegations failed to adequately plead actual malice. *See, e.g., McGuire v. Bowlin*, 932 N.W.2d 819, 823 (Minn. 2019) (holding public figures may only recover damages from defamatory falsehoods relating to official conduct if the statements were made with actual malice). In addition, paragraph 12 of the complaint, which alleges that assertions in a statement of probable cause for a criminal complaint were defamatory, was dismissed on the alternate ground of absolute privilege. *See, e.g., Carradine v. State*, 511 N.W.2d 733, 736 (Minn. 1994) (holding statements in a police officer's report were protected from a claim for defamation by absolute privilege). Because we affirm the dismissal of these

Our analysis of these two claims is guided by the fact that, in reviewing an order of dismissal for failure to state a claim under Minn. R. Civ. P. 12.02(e), we must “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Walsh*, 851 N.W.2d at 606. Under this standard, we conclude that the district court erred in dismissing the claims set forth in paragraphs 33 and 37 for lack of specificity.⁷

The first allegation, set out in paragraph 33 of the complaint, states as follows:

Defendant Coughlin made statements to an individual, [T. M.] after the criminal proceedings were concluded, falsely claiming that Mr. Hunter had been charged with a crime involving a sexual assault of a family member. This is defamation per se. Ms. Coughlin made that statement knowing that it was not true with the intention of causing harm to Mr. Hunter’s reputation. These statements were made in August and September, 2019, and caused actual and obvious harm to Hunter’s reputation.

The district court determined that this allegation may state a claim for defamation per se. A claim for defamation per se involves a false accusation of a crime or act of moral turpitude such that damages are presumed because the nature of the statement is such that it is “virtually certain to cause serious injury to reputation.” *Maethner*, 929 N.W.2d at 875 (quotation omitted). The district court, however, held that the allegation lacked the

allegations for lack of specificity, we need not address these alternate grounds for dismissal.

⁷ We note that the district court did not include paragraph 33 in the “lack of specificity” section of its analysis, but addressed it in a separate section because the paragraph purports to set out a claim for defamation per se. We include paragraph 33 in our analysis here of claims dismissed for “lack of specificity,” because the district court ultimately concluded that the claim in paragraph 33 should be dismissed on that basis.

requisite specificity to survive a rule 12 motion, noting among other things that no speaker was identified. We disagree.

First, we note that the allegation identifies Coughlin as the speaker. Further, the allegation identifies to whom the statement was made—T.M., and provides a relatively narrow time frame of August and September of 2019. With regard to the specificity of the alleged defamatory statement itself, we are mindful that there are no quotation marks around the statement. Nevertheless, resolving all inferences in favor of the nonmoving party as is required on a rule 12 motion, we conclude that there is sufficient specificity to state a claim and survive the motion to dismiss.

We come to a similar conclusion with respect to the allegation in paragraph 37, which was also dismissed by the district court for lack of specificity. In this paragraph, Hunter alleges that “[i]n 2018, both . . . Coughlin and Randolph told a banker of Mr. Hunter’s at Deerwood Bank, Mr. [A.], that Mr. Hunter had committed a number of serious crimes, including crimes of dishonesty and financial crimes, causing Mr. [A.] and the Bank to withdraw a line of credit Mr. Hunter used for his business causing further damage to Mr. Hunter’s reputation and his ability to do business.” Assessing this allegation with “all reasonable inferences in favor of the nonmoving party,” we read this paragraph to assert the following: that in 2018 a statement was made to Mr. A. by Coughlin and Randolph, while they were at the Deerwood Bank, that Hunter had committed “crimes of dishonesty and financial crimes.” Thus, this allegation, while containing a broader time frame, sets out the content of the statement—that Hunter committed “crimes of dishonesty and financial crimes”; identifies the speakers—Coughlin and Randolph; identifies the

person to whom the statement was made—Mr. A.; and identifies where the statement was made—Deerwood Bank. As such, we conclude that this allegation also contains sufficient detail to withstand a motion to dismiss under Minn. R. Civ. P. 12.02(e) for lack of specificity.

Our reversal of the dismissal of paragraphs 33 and 37 for lack of specificity does not mean, however, that Hunter can stray from the wording set out in these two paragraphs, adding different alleged statements as the case develops. He is held to the four corners of the wording in paragraphs 33 and 37 unless he obtains leave of court to amend his complaint. *See Benson*, 561 N.W.2d at 538 (allegedly defamatory statements not included in the complaint are not actionable).

B. Allegations Dismissed as Statements of Opinion, Not Fact

The district court dismissed a number of allegations in the complaint on the grounds that they set out statements of opinion, not alleged facts.⁸ These include the allegations that (1) Coughlin said, “I hope Mr. Hunter does time as he deserves to do time”; (2) Randolph said, “this is bullsh-t” at the end of Hunter’s trial for theft by swindle; and (3) Randolph said “prior to and after all three trials,” words to the effect that “anyone who was favorable to Mr. Hunter must have been paid off.”

As set out above, one of the elements for pleading a defamation claim is that the alleged statement must be a statement of fact that can be proven or disproven. *Jadwin v.*

⁸ This group includes paragraphs 15, 19, and 39 through 41 of the complaint. Because the district court dismissed paragraphs 15 and 19 on the grounds of lack of specificity, and we affirm the dismissal of those paragraphs on those grounds, we will not include them in our analysis of whether they also constitute opinion.

Minneapolis Star & Tribune Co., 390 N.W.2d 437, 441 (Minn. App.1986) (“Expressions of opinion, rhetoric, and figurative language are generally not actionable if, in context, the audience would understand the statement is not a representation of fact.”). Statements of opinion are generally protected by the First Amendment and, because they are based on the point of view of the speaker, they are not susceptible to being proven as true or false. *McKee*, 825 N.W.2d at 733; *Lund v. Chicago & Nw. Transp.*, 467 N.W.2d 366, 369 (Minn. App. 1991), *review denied* (Minn. June 19, 1991). “For this reason, even vulgar language or name-calling is not necessarily defamation.” *Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

This court will “consider four factors when determining whether a statement is one of fact or opinion: (1) the precision and specificity of the statement; (2) the statement’s verifiability; (3) the social and literary context of the statement; and (4) the public context in which the statement was made.” *Id.* at 740. Applying these factors to the allegations, we conclude that the district court correctly dismissed the allegations as setting out statements of opinion instead of fact. For example, the first allegation starts with the words, “I hope” and discusses what Coughlin believes Hunter “deserves.” The second allegation, that “[t]his is bullsh-t,” allegedly said at the end of a trial, is even more clearly one of opinion. *See Lund*, 467 N.W.2d at 369 (stating terms such as “sh-t heads,” “favoritism,” and “brown nose” are not verifiable and the “ambiguous implications of the words prevent them from being proven true or false”); *Lee v. Metro. Airport Comm’n*, 428 N.W.2d 815, 821 (Minn. App. 1988) (“As a matter of law, statements that appellant is a ‘fluffy,’ a ‘bitch,’ or flirtatious are too imprecise in nature to be actionable defamatory statements.”).

Finally, the allegation that anyone who was “favorable” to Hunter “must have been paid off,” similarly appears to be a statement of opinion rather than a factual allegation that Hunter had bribed witnesses.⁹

Hunter argues that the statements had the impact of fact, not opinion, because Coughlin and Randolph held positions of authority and that the dismissal of these claims should therefore be reversed. Hunter, however, offers no legal support for this argument, and we reject it.

Hunter further argues that an opinion can be actionable as defamation if it lowers the community’s estimation of the individual. To support this claim, Hunter relies on cases that do not reflect the current state of First Amendment protections and defamation law in Minnesota. *Compare Uhlman v. Farm Stock & Home Co.*, 148 N.W. 102, 102 (Minn. 1914) (holding that any published false statements meant to lower a man’s reputation is libel per se), *with Jadwin*, 390 N.W.2d at 441 (holding that “only false and defamatory statements *of fact* are actionable” (emphasis added)). Current caselaw distinguishes statements of opinion, which are nonactionable, from statements of fact that can form the basis of a defamation claim. *McKee*, 825 N.W.2d at 733.

We therefore conclude that the district court did not err in dismissing the above-identified allegations on the grounds that they were statements of opinion not actionable on a claim for defamation.

⁹ We also note that the allegations fail to identify to whom the statements were made, other than to “numerous persons” and were “frequently said,” and otherwise lack specificity.

C. Allegations Barred by the Statute of Limitations

The district court dismissed the allegations set out in paragraphs 5-8, 10-12, 17, and 18 of the complaint, because they were brought outside the two-year statute of limitations for defamation claims. Minn. Stat. § 541.07(1) (2020). Hunter does not challenge that the above-referenced allegations are outside the two-year limitations period, but argues that the statute of limitations was tolled under the fraudulent-concealment doctrine. The district court found that the doctrine was not applicable because Hunter failed to plead any act of fraudulent concealment by respondents. We agree.

The doctrine of fraudulent concealment allows for the tolling of a statute of limitations when the defendant has fraudulently hidden a legal claim. *Lamere v. St. Jude Med., Inc.*, 827 N.W.2d 782, 788 (Minn. App. 2013). In order to invoke this equitable doctrine, Hunter must have pleaded a specific act of fraud committed by respondents in order to conceal the allegedly defamatory statements. *McGaa v. Glumack*, 441 N.W.2d 823, 825 (Minn. App. 1989), *review denied* (Minn. Aug. 15, 1989). Hunter has failed to plead any such acts by respondents. In his appeal, Hunter claims merely that respondents falsely accused him of crimes and that this somehow prevented him from discovering the allegations. Moreover, we note that the allegations in these paragraphs relate to the criminal complaints and news articles, none of which could be characterized as “concealed” evidence, let alone fraudulently concealed.

Because Hunter did not plead specific acts of fraud performed by respondents in order to conceal defamatory statements, we hold that the district court did not err by dismissing paragraphs 5-8, 10-12, 17, and 18 as barred by the statute of limitations.¹⁰

D. Dismissal of all Claims for Failure to Adequately Plead Damages

The last issue relates to the question of whether Hunter sufficiently alleged damages. The district court concluded that all allegations in the complaint fail to state a sufficient claim for harm to his reputation. Because we have affirmed the dismissal of all claims, except two, on alternate grounds, we need only address this issue with regard to the two surviving allegations set forth in paragraphs 33 and 37. Those paragraphs both assert criminal conduct by Hunter—that he was “charged with a crime involving a sexual assault of a family member” and committed “crimes of dishonesty and financial crimes.” These allegations arguably constitute claims of defamation per se, for which damages are presumed. *Maethner*, 929 N.W.2d at 875. Thus, any failure to allege damage to reputation would not be a basis to dismiss paragraphs 33 and 37 on a motion under Minn. R. Civ. P. 12.02(e). And, regardless of whether defamation per se is applicable to these claims, the damages allegations are likely adequate as pleaded in the complaint to survive a rule 12 motion for failure to state a claim. For example, in connection with paragraph 37 and the alleged defamatory statement made to Hunter’s banker, Hunter claims as damages that the bank withdrew a business line of credit and that this harmed Hunter’s “ability to do business.”

¹⁰ We note that the claims in these paragraphs were also dismissed by the district court for lack of specificity, a ruling affirmed by this court in an earlier section of this opinion.

Because we conclude that the allegations in paragraph 33 and paragraph 37 are sufficient to withstand a motion pursuant to Minn. R. Civ. P. 12.01(e), we reverse the dismissal of those claims and remand, but affirm the dismissal of all other claims in the complaint.

Affirmed in part, reversed in part, and remanded.